

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Lu et al.
Serial No. : 10/728,195
Filed : December 3, 2003
Title : POLYVALENT, PRIMARY HIV-1 GLYCOPROTEIN DNA VACCINES AND VACCINATION METHODS

Art Unit : 1648
Examiner : Bo Peng
Conf. No. : 7308

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)

Applicants hereby request reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced application. Reconsideration of the PTA calculation to decrease Applicant Delay from 635 days to 570 days is respectfully requested.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

PTO Delay

A first PTO action was due on or before February 3, 2005 (the date that is fourteen months after December 3, 2003, the date on which the application was filed). The PTO mailed the first non-final Office Action on June 22, 2005, thereby according a PTO Delay of 139 days. Applicants do not dispute the PTO's calculation for this PTO Delay from February 4, 2005 (the day after the date that is fourteen months after the date on which the application was filed), to June 22, 2005. See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).

A PTO action was due on or before April 8, 2007 (the date that is four months after December 8, 2006, the date on which a response to Office Action was filed). The PTO mailed a final Office Action on July 9, 2007, thereby according a PTO Delay of 92 days. Applicants do not dispute the PTO's calculation for this PTO Delay from April 9, 2007 (the day after the date that is four months after the date on which a response to Office Action was filed), to July 9, 2007. See 37 C.F.R. §§ 1.702(a)(2) and 1.703(a)(2).

In view of the periods of PTO Delay detailed above, the total PTO Delay for this application at allowance should be calculated as 231 days (the sum of 139 days and 92 days).

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: December 17, 2010.

Applicant Delay

A reply to an Office Action was due on or before September 22, 2005 (the date that is three months after June 22, 2005, the date on which the Office Action was mailed). Applicants filed a response to the Office Action on September 26, 2005, thereby according an Applicant Delay of 4 days. Applicants do not dispute the PTO's calculation for this Applicant Delay from September 23, 2005 (the day after the date that is three months after the date on which the Office Action was mailed), to September 26, 2005. See 37 C.F.R. § 1.704(b).

Applicants filed a Supplemental Reply on October 6, 2005, subsequent to a reply filed on September 26, 2005. Applicants were accorded 0 days delay for a supplemental response. In good faith and candor, Applicants submit that the supplemental response should have been accorded a total Applicant Delay of 10 days for delay from September 27, 2005, to October 6, 2005. See 37 C.F.R. § 1.704(c)(8).

A reply to an Office Action was due on or before February 16, 2006 (the date that is three months after November 16, 2005, the date on which the Office Action was mailed). Applicants filed a response to the Office Action on May 19, 2006, thereby according an Applicant Delay of 92 days. Applicants do not dispute the PTO's calculation for this Applicant Delay from February 17, 2006 (the day after the date that is three months after the date on which the Office Action was mailed), to May 19, 2006. See 37 C.F.R. § 1.704(b).

Applicants filed an Information Disclosure Statement on July 11, 2006, subsequent to a reply filed on May 19, 2006. Applicants were accorded a delay of 53 days for a supplemental response. Applicants do not dispute the PTO's calculation for this Applicant Delay from May 20, 2006, to July 11, 2006. See 37 C.F.R. § 1.704(c)(8).

A reply to an Office Action was due on or before November 8, 2006 (the date that is three months after August 8, 2006, the date on which the Office Action was mailed). Applicants filed a response to the Office Action on December 8, 2006, thereby according an Applicant Delay of 30 days. Applicants do not dispute the PTO's calculation for this Applicant Delay from November 9, 2006 (the day after the date that is three months after the date on which the Office Action was mailed), to December 8, 2006. See 37 C.F.R. § 1.704(b).

Applicants filed an Information Disclosure Statement on April 27, 2007, subsequent to a reply filed on December 8, 2006. Applicants were accorded 0 days delay for a supplemental

response. In good faith and candor, Applicants submit that the Information Disclosure Statement should have been accorded a total Applicant Delay of 140 days for delay from December 9, 2006, to April 27, 2007. See 37 C.F.R. § 1.704(c)(8).

A reply to an Office Action was due on or before October 9, 2007 (the date that is three months after July 9, 2007, the date on which the Office Action was mailed). Applicants filed a Notice of Appeal on January 9, 2008. Applicants were accorded 0 days delay for a late response. In good faith and candor, Applicants submit that the late response should have been accorded a total Applicant Delay of 92 days for delay from October 10, 2007 (the day after the date that is three months after the date on which the Office Action was mailed), to January 9, 2008. See 37 C.F.R. § 1.704(b).

Applicants filed a Request for Continued Examination on August 11, 2008, subsequent to a Notice of Appeal filed on January 9, 2008. Applicants were accorded a delay of 307 days for a late response. Applicants have reviewed the Office's calculation of Applicant Delay as shown in the PAIR Patent Term Adjustment History, which appears to have been calculated as a reduction to the period of adjustment due to a failure to respond to a final Office Action mailed October 7, 2007. However, Applicants believe the filing of a Request for Continued Examination subsequent to the Notice of Appeal filed January 9, 2008, as was the case in the instant application, does not constitute a failure to engage in reasonable efforts to conclude processing or examination of the application as intended in 37 C.F.R. § 1.704(b), and as such, Applicants respectfully request the Applicant Delay be decreased from 307 days to 0 days. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before January 31, 2009 (the date that is three months after October 31, 2008, the date on which the Office Action was mailed). Applicants filed a response to the Office Action on April 30, 2009, thereby according an Applicant Delay of 89 days. Applicants do not dispute the PTO's calculation for this Applicant Delay from February 1, 2009 (the day after the date that is three months after the date on which the Office Action was mailed), to April 30, 2009. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before November 27, 2009 (the date that is three months after August 27, 2009, the date on which the Office Action was mailed). Applicants filed a Notice of Appeal on January 26, 2010, thereby according an Applicant Delay

of 60 days. Applicants do not dispute the PTO's calculation for this Applicant Delay from November 28, 2009 (the day after the date that is three months after the date on which the Office Action was mailed), to January 26, 2010. See 37 C.F.R. § 1.704(b).

In view of the periods of Applicant Delay detailed above, the total Applicant Delay for this application should be calculated as 570 days (the sum of 4 days, 10 days, 92 days, 53 days, 30 days, 140 days, 92 days, 0 days, 89 days, and 60 days).

Conclusion

In consideration of the events described above, Applicants believe the PTA calculation of 635 days Applicant Delay is incorrect. As such, Applicants respectfully request reconsideration of the PTA in the following manner:

- 1) Total PTO Delay should be calculated as 231 days;
- 2) Total Applicant Delay should be calculated as 570 days; and
- 3) Total PTA should be calculated as 0 days.

The fee of \$200 required under 37 C.F.R. § 1.18(e) is being submitted herewith. Please apply any other required charges or credits to Deposit Account No. 06-1050, referencing attorney docket number 07917-0269001.

Respectfully submitted,

Date: December 16, 2010

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